

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

GREATER ST. LOUIS CONSTRUCTION )  
LABORERS WELFARE FUND, et al., )  
Plaintiffs, )  
vs. ) Case No. 4:07CV1393 HEA  
BENCO LANDSCAPE CONSTRUCTION CO., )  
Defendant. )

**MEMORANDUM AND ORDER**

This matter is before the Court on Plaintiffs' Motion for Default Judgment, [Doc. No. 12], Defendant's Second Motion to Dismiss, [Doc. No. 14], and the Court's own motion to vacate the entry of default by the Clerk on November 26, 2007. Plaintiffs' Motion for Default Judgment is denied. Plaintiffs' First Amended Complaint failed to satisfy the Court's Order of November 15, 2007, and Plaintiffs have since requested leave, and were granted leave to file a Second Amended Complaint. The Second Amended Complaint was filed on December 5, 2007, and Defendant has a pending Motion to Dismiss. Thus, the Motion for Default Judgment is premature. Defendant's Motion to Dismiss is denied as moot in that Plaintiffs have filed a Second Amended Complaint.

The entry of default by the Clerk of the Court on November 26, 2007 is

VACATED. Defendant is clearly not in default with respect to Plaintiffs' Second Amended Complaint. Defendant shall file a responsive pleading to the Second Amended Complaint within the time provided by the Federal Rules of Civil Procedure.

Dated this 19th day of December, 2007.



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HENRY EDWARD AUTREY  
UNITED STATES DISTRICT JUDGE